

## HOUSE BILL NO. 543

INTRODUCED BY F. BOSS RIBS

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING TRIBAL GOVERNMENTS WITH SERVICES INTENDED TO PREVENT THE ABUSE, SEXUAL ABUSE, NEGLECT, AND EXPLOITATION OF MONTANA'S ELDERLY PERSONS AND PERSONS WITH DEVELOPMENTAL DISABILITIES; ADDING A TRIBAL GOVERNMENT REPRESENTATIVE TO ADULT PROTECTIVE SERVICE TEAMS; REQUIRING CERTAIN TRIBAL GOVERNMENT REPRESENTATIVES TO REPORT SUSPECTED ABUSE; PROVIDING AN APPROPRIATION; AND AMENDING SECTIONS 52-3-802, 52-3-803, 52-3-805, AND 52-3-811, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 52-3-802, MCA, is amended to read:

**"52-3-802. Legislative findings and purpose.** The legislature finds that a need exists to provide for cooperation among law enforcement officials and agencies, tribal governments, courts, and state and county agencies providing human services in preventing the abuse, sexual abuse, neglect, and exploitation of Montana's elderly persons and persons with developmental disabilities through the identification, reporting, and prosecution of acts of abuse, sexual abuse, neglect, and exploitation."

**Section 2.** Section 52-3-803, MCA, is amended to read:

**"52-3-803. Definitions.** As used in this part, the following definitions apply:

(1) "Abuse" means:

(a) the infliction of physical or mental injury; or

(b) the deprivation of food, shelter, clothing, or services necessary to maintain the physical or mental health of an older person or a person with a developmental disability without lawful authority. A declaration made pursuant to 50-9-103 constitutes lawful authority.

(2) "Department" means the department of public health and human services provided for in 2-15-2201.

(3) "Exploitation" means:

(a) the unreasonable use of an older person or a person with a developmental disability or of a power of attorney, conservatorship, or guardianship with regard to an older person or a person with a developmental

1 disability in order to obtain control of or to divert to the advantage of another the ownership, use, benefit, or  
2 possession of or interest in the person's money, assets, or property by means of deception, duress, menace,  
3 fraud, undue influence, or intimidation with the intent or result of permanently depriving the older person or person  
4 with a developmental disability of the ownership, use, benefit, or possession of or interest in the person's money,  
5 assets, or property;

6 (b) an act taken by a person who has the trust and confidence of an older person or a person with a  
7 developmental disability to obtain control of or to divert to the advantage of another the ownership, use, benefit,  
8 or possession of or interest in the person's money, assets, or property by means of deception, duress, menace,  
9 fraud, undue influence, or intimidation with the intent or result of permanently depriving the older person or person  
10 with a developmental disability of the ownership, use, benefit, or possession of or interest in the person's money,  
11 assets, or property;

12 (c) the unreasonable use of an older person or a person with a developmental disability or of a power  
13 of attorney, conservatorship, or guardianship with regard to an older person or a person with a developmental  
14 disability done in the course of an offer or sale of insurance or securities in order to obtain control of or to divert  
15 to the advantage of another the ownership, use, benefit, or possession of the person's money, assets, or property  
16 by means of deception, duress, menace, fraud, undue influence, or intimidation with the intent or result of  
17 permanently depriving the older person or person with a developmental disability of the ownership, use, benefit,  
18 or possession of the person's money, assets, or property.

19 (4) "Incapacitated person" has the meaning given in 72-5-101.

20 (5) "Long-term care facility" means a facility defined in 50-5-101.

21 (6) "Mental injury" means an identifiable and substantial impairment of a person's intellectual or  
22 psychological functioning or well-being.

23 (7) "Neglect" means the failure of a person who has assumed legal responsibility or a contractual  
24 obligation for caring for an older person or a person with a developmental disability or who has voluntarily  
25 assumed responsibility for the person's care, including an employee of a public or private residential institution,  
26 facility, home, or agency, to provide food, shelter, clothing, or services necessary to maintain the physical or  
27 mental health of the older person or the person with a developmental disability.

28 (8) "Older person" means a person who is at least 60 years of age. For purposes of prosecution under  
29 52-3-825(2) or (3), the person 60 years of age or older must be unable to provide personal protection from abuse,  
30 sexual abuse, neglect, or exploitation because of a mental or physical impairment or because of frailties or

dependencies brought about by advanced age.

(9) "Person with a developmental disability" means a person 18 years of age or older who has a developmental disability, as defined in 53-20-102.

(10) "Physical injury" means death, permanent or temporary disfigurement, or impairment of any bodily organ or function.

(11) "Sexual abuse" means the commission of sexual assault, sexual intercourse without consent, indecent exposure, deviate sexual conduct, or incest, as described in Title 45, chapter 5, part 5.

(12) "Tribal government" means a federally recognized Indian tribe located within the boundaries of the state of Montana that has entered into a cooperative agreement as provided in Title 18, chapter 11, for purposes of this part."

**Section 3.** Section 52-3-805, MCA, is amended to read:

**"52-3-805. Adult protective service teams.** (1) The county attorney or the department of public health and human services shall convene one or more temporary or permanent interdisciplinary adult protective service teams. These teams shall assist in assessing the needs of, formulating and monitoring a treatment plan for, and coordinating services to older persons and persons with developmental disabilities who are victims of abuse, sexual abuse, neglect, or exploitation. The supervisor of adult protective services of the department of public health and human services or the department's designee shall serve as the team's coordinator. Members must include a social worker, a member of a local law enforcement agency, a representative of the medical profession, a representative of tribal government, and a county attorney or the county attorney's designee, who is an attorney. Members may include other appropriate persons designated by the county attorney or the department.

(2) When the team considers a matter involving an adult with developmental disabilities in the care of a person providing developmental disabilities services, the team must also include a provider of developmental disability services other than the provider involved in the matter under review. The team shall make a report to the county attorney that contains a recommendation concerning any criminal prosecution to be brought pursuant to this part."

**Section 4.** Section 52-3-811, MCA, is amended to read:

**"52-3-811. Reports.** (1) When the professionals and other persons listed in subsection (3) know or have reasonable cause to suspect that an older person or a person with a developmental disability known to them in

1 their professional or official capacities has been subjected to abuse, sexual abuse, neglect, or exploitation, they  
2 shall:

3 (a) if the person is not a resident of a long-term care facility, report the matter to:

4 (i) the department or its local affiliate; or

5 (ii) the county attorney of the county in which the person resides or in which the acts that are the subject  
6 of the report occurred;

7 (b) if the person is a resident of a long-term care facility, report the matter to the long-term care  
8 ombudsman appointed under the provisions of 42 U.S.C. 3027(a)(12) and to the department. The department  
9 shall investigate the matter pursuant to its authority in 50-5-204 and, if it finds any allegations of abuse, sexual  
10 abuse, neglect, or exploitation contained in the report to be substantially true, forward a copy of the report to the  
11 county attorney as provided in subsection (1)(a)(ii).

12 (2) If the report required in subsection (1) involves an act or omission of the department that may be  
13 construed as abuse, sexual abuse, neglect, or exploitation, a copy of the report may not be sent to the department  
14 but must be sent instead to the county attorney of the county in which the older person or the person with a  
15 developmental disability resides or in which the acts that are the subject of the report occurred.

16 (3) Professionals and other persons required to report are:

17 (a) a physician, resident, intern, professional or practical nurse, physician assistant, or member of a  
18 hospital staff engaged in the admission, examination, care, or treatment of persons;

19 (b) an osteopath, dentist, denturist, chiropractor, optometrist, podiatrist, medical examiner, coroner, or  
20 any other health or mental health professional;

21 (c) an ambulance attendant;

22 (d) a social worker or other employee of the state, a county, or a municipality or a tribal government  
23 representative, assisting an older person or a person with a developmental disability in the application for or  
24 receipt of public assistance payments or services;

25 (e) a person who maintains or is employed by a roominghouse, retirement home or complex, nursing  
26 home, group home, adult foster care home, adult day-care center, or assisted living facility or an agency or  
27 individual that provides home health services or personal care in the home;

28 (f) an attorney, unless the attorney acquired knowledge of the facts required to be reported from a client  
29 and the attorney-client privilege applies;

30 (g) a peace officer or other law enforcement official;

1 (h) a person providing services to an older person or a person with a developmental disability pursuant  
2 to a contract with a state, ~~or~~ federal, or tribal agency; and

3 (i) an employee of the department while in the conduct of the employee's duties.

4 (4) Any other persons or entities may, but are not required to, submit a report in accordance with  
5 subsection (1)."

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7 **NEW SECTION. Section 5. Appropriation.** (1) There is appropriated \$200,000 from the state general  
8 fund to the department of public health and human services for each of the fiscal years 2010 and 2011.

9 (2) The appropriation must be used to pay for two FTE adult protective service workers, travel, training,  
10 and community awareness in order to provide support for Montana tribal government communities.

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12 **NEW SECTION. Section 6. Notification to tribal governments.** The secretary of state shall send a  
13 copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell  
14 Chippewa tribe.

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16 **NEW SECTION. Section 7. Transition.** In order to implement [this act], protective service workers  
17 serving Montana tribal government communities must have access to the department's operation protect Montana  
18 protective services data management and reporting system.

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